

Apr 01, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DANIEL LEE WELLS, JR.,  
Petitioner,

v.

JEFFREY A. UTTECHT,  
Respondent.

NO. 2:20-CV-00011-SAB

**ORDER SUMMARILY  
DISMISSING HABEAS  
PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

**EXHAUSTION REQUIREMENT**

Petitioner challenges his 2019 Spokane County guilty pleas to Child Molestation in the Second Degree, Rape of a Child in the Second Degree and Rape of a Child in the Third Degree. His sentence was 194 months to life in prison. Petitioner indicates that he has not appealed his conviction and sentence. ECF No. 1 at 2.

In his grounds for relief, Petitioner argues that the State of Washington has no jurisdiction to decide federal constitutional matters. *Id.* at 6-13. It has long been settled that state courts are competent to decide questions arising under the U.S.

1 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
2 state court, as much as it is that of the federal courts, when the question of the  
3 validity of a state statute is necessarily involved, as being in alleged violation of  
4 any provision of the federal constitution, to decide that question, and to hold the  
5 law void if it violate that instrument.”); *see also Worldwide Church of God v.*  
6 *McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as  
7 competent as federal courts to decide federal constitutional matters). Therefore,  
8 Petitioner’s arguments to the contrary lack merit.

9       Additionally, before a federal court may grant habeas relief to a state  
10 prisoner, the prisoner must exhaust the state court remedies available to him. 28  
11 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally  
12 requires that a prisoner give the state courts an opportunity to act on his claims  
13 before he presents those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S.  
14 838 (1999). A petitioner has not exhausted a claim for relief so long as the  
15 petitioner has a right under state law to raise the claim by available procedure. *See*  
16 *id.*; 28 U.S.C. § 2254(c).

17       To meet the exhaustion requirement, the petitioner must have “fairly  
18 present[ed] his claim in each appropriate state court (including a state supreme  
19 court with powers of discretionary review), thereby alerting that court to the  
20 federal nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,  
21 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court  
22 by describing the factual or legal bases for that claim and by alerting the state court  
23 “to the fact that the ... [petitioner is] asserting claims under the United States  
24 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249  
25 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in  
26 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513  
27 U.S. at 365–366.

1 Furthermore, to fairly present a claim, the petitioner “must give the state  
2 courts one full opportunity to resolve any constitutional issues by invoking one  
3 complete round of the State's established appellate review process.” *O'Sullivan*,  
4 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
5 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
6 (1971). It appears from the face of the Petition and the attached documents that  
7 Petitioner has not exhausted his state court remedies as to each of his grounds for  
8 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
9 court remedies. ECF No. 1 at 2.

#### 10 **GROUND FOR FEDERAL HABEAS RELIEF**

11 Petitioner asserts that the Washington State constitution contradicts the  
12 federal constitution regarding the Fifth Amendment right to “presentment or  
13 indictment of a Grand Jury.” He claims “no bill of indictment” was brought against  
14 him rendering his arrest, conviction and imprisonment illegal.

15 Petitioner seems to argue that because the state courts have defied “federally  
16 established procedures and processes for the adjudication of crimes” only “a court  
17 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
18 assertion that “due process of the law was ignored” is unsupported by his factual  
19 allegations.

20 The United States Supreme Court stated long ago: “Prosecution by  
21 information instead of by indictment is provided for by the laws of Washington.  
22 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277  
23 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the contrary presented  
24 in his four grounds for federal habeas relief are legally frivolous.

25 Because it plainly appears from the petition and accompanying documents  
26 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,  
27 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254  
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1 Cases in the United States District Courts. **IT IS FURTHER ORDERED** that all  
2 pending Motions are **DENIED as moot**.

3 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
4 enter judgment, provide copies to Petitioner, and **close** the file. The Court certifies  
5 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
6 taken in good faith, and there is no basis upon which to issue a certificate of  
7 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
8 appealability is therefore **DENIED**.

9 **DATED** this 1st day of April 2020.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

16 Stanley A. Bastian  
17 United States District Judge  
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